

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
ETHICS ADJUDICATORY BOARD**

BOARD OF ETHICS

*** DOCKET NO. 2020-5783-ETHICS-A**

IN THE MATTER OF

EMIL BRANDLY, SR.

*** AGENCY ID NO. 5120-046**

DECISION AND ORDER

The Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, requested an adjudicatory hearing to have the Ethics Adjudicatory Board determine whether Emil Brandly, Sr., failed to file his 10-G campaign finance disclosure report by the eleventh day after it was due, in connection with his 2019 candidacy for Rapides Parish Sheriff. The Louisiana Board of Ethics proved by clear and convincing evidence that Emil Brandly, Sr., failed to file this campaign finance disclosure report as alleged. The Louisiana Board of Ethics is authorized to impose an additional civil penalty not to exceed \$10,000 upon Emil Brandly, Sr., for failing to file his 10-G campaign finance disclosure report as allowed by La. R.S. 18:1505.4(A)(4)(b).

APPEARANCES

An adjudicatory hearing in this matter was conducted on November 12, 2020, in Baton Rouge, Louisiana, before Panel A of the Ethics Adjudicatory Board.¹ Charles E. Reeves, Jr., appeared as counsel on behalf of the Board of Ethics. Although duly noticed, Emil Brandly, Sr., did not appear for the hearing.²

¹ The panel consisted of administrative law judges Sherlyn D. Shumpert (presiding), A. Brock Avery, and Lance B. Vinson.

² BOE Exhibit 8. The hearing notice was mailed on June 25, 2020, by the Administrative Hearings Clerk for the Division of Administrative Law to Emil Brandly, Sr., at: P.O. Box 741, Glenmora, Louisiana, 71433.

STATEMENT OF THE CASE

In connection with his 2019 candidacy for Rapides Parish Sheriff, the Louisiana Board of Ethics (BOE), in its capacity as the Supervisory Committee on Campaign Finance Disclosure, imposed a civil penalty upon Emil Brandly, Sr. (Respondent) for failing to file the campaign finance disclosure report that was due on the tenth day before the general election (10-G report). The BOE then requested an adjudicatory hearing to have the Ethics Adjudicatory Board (EAB) determine whether Respondent failed to file his 10-G report by the eleventh day after it was due, which could subject him to an additional civil penalty not to exceed \$10,000, as provided by La. R.S. 18:1505.4(A)(4)(b).

During the hearing, counsel for the BOE offered eight exhibits, which were admitted into evidence.³ Counsel presented the case on behalf of the BOE, the record was closed, and the matter was submitted for decision.

This adjudication is conducted in accordance with the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*, the Campaign Finance Disclosure Act (CFDA), La. R.S. 18:1481, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the enabling legislation of the Division of Administrative Law, La. R.S. 49:991, *et seq.*

FINDINGS OF FACT

Respondent qualified as a candidate for Rapides Parish Sheriff.⁴ The primary election was held on October 12, 2019, and the general election was held on November 16, 2019.⁵ Respondent was required to file his 10-G report by November 6, 2019.⁶

³ All of the exhibits had been certified by affidavit to be true and correct copies of the BOE records. BOE-1 (September 30, 2020, affidavit of Carolyn Abadie Landry, Executive Secretary for the BOE).

⁴ BOE Exhibit 2.

⁵ BOE Exhibit 4.

⁶ See La. R.S. 18:1495.4(B)(5).

On February 18, 2020, the BOE issued a Late Fee Assessment Order to Respondent ordering him to pay a statutory late fee of \$2,000 for failing to timely file his 10-G report.⁷ Respondent was also notified in the letter accompanying the *Late Fee Assessment Order* that he could be subject to an assessment of an additional \$10,000 civil penalty for failing to timely file his 10-G report.⁸ The *Late Fee Assessment Order* was sent to Respondent by certified mail with return receipt requested at his last known address.⁹

As of September 29, 2020, Respondent had not filed his 10-G report.¹⁰

CONCLUSIONS OF LAW

Respondent knowingly failed to file his 10-G report by the eleventh day after it was due. For this failure, the BOE is authorized to impose an additional civil penalty upon Respondent as allowed by La. R.S. 18:1505.4(A)(4)(b).

In adjudicatory hearings under La. R.S. 18:1505.4(A)(4)(b), the BOE must prove by clear and convincing evidence¹¹ that the candidate knowingly¹² failed to file “other reports” required in connection with candidacy for office more than eleven days after they are due. If, after conducting an adjudicatory hearing, the EAB determines that a candidate knowingly failed to file a required campaign finance disclosure report more than eleven days after it was due,¹³ then the BOE may

⁷ BOE Exhibit 6.

⁸ *Id.* at page 2.

⁹ *Id.* at page 3.

¹⁰ BOE Exhibit 7.

¹¹ See La. R.S. 42:1141.5(C). “‘Clear and convincing evidence’, in general, means that the fact of guilt must be proven to a greater degree than by ‘a mere preponderance of the evidence’ but less than by ‘beyond a reasonable doubt.... The standard requires that the existence of the disputed fact be [h]ighly probable, that is, much more probable than its non-existence.’” *Louisiana State Bar Ass’n v. Edwins*, 329 So. 2d 437, 442 (La. 1976).

¹² La. R.S. 18:1505.4(A)(1).

¹³ The eleven-day period applies to reports other than those a candidate is required to file between qualifying for the election and the day of the election.

impose an additional civil penalty not to exceed \$10,000 upon the candidate for each report that he failed to file.¹⁴

Report Filing Requirements and Fixed Statutory Penalty

Respondent qualified as a candidate for Rapides Parish Sheriff, which is a “district office.”¹⁵ Every candidate (or his campaign treasurer) for a district office is required to file certain campaign finance disclosure reports by the statutory deadlines.¹⁶ Failure to timely submit a required report constitutes a violation of the CFDA.¹⁷ Failure to submit a required report within three days after the final date for filing is presumptive evidence of intent to not file the report.¹⁸

As a candidate for a district office, Respondent was required to file a 10-G report by the tenth day prior to the general election.¹⁹ Respondent did not file this report by the statutory deadline or by the eleventh day after the deadline. The BOE issued a *Late Fee Assessment Order* to Respondent ordering him to pay the statutory late fee of \$2,000 for failing to file his 10-G report.²⁰

Assessment of Additional Civil Penalty

With the benefit of the un rebutted statutory presumption of intent not to file, the BOE proved by clear and convincing evidence that Respondent knowingly violated the CFDA by failing to file his 10-G report by November 17, 2019.²¹ As a result, the BOE is authorized to impose an additional civil penalty not to exceed \$10,000 for failing to file his 10-G report, as allowed by La. R.S. 18:1505.4(A)(4)(b) .

¹⁴ See La. R.S. 18:1505.4(A)(4)(b).

¹⁵ See La. R.S. 18:1483(7) (defining “district office”).

¹⁶ La. R.S. 18:1495.4(A).

¹⁷ La. R.S. 18:1505.1(B).

¹⁸ La. R.S. 18:1505.1(A).

¹⁹ La. R.S. 18:1495.4(B)(5).

²⁰ BOE Exhibit 6.

²¹ The 10-G report was due November 6, 2019; the third day after November 6, 2019, was November 9, 2019; and the eleventh day after November 6, 2019, was November 17, 2019.

ORDER

IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty not to exceed \$10,000 upon Emil Brandly, Sr., for his failure to file his 10-G campaign finance disclosure report by the eleventh day after it was due.

Rendered and signed on December 21, 2020, in Baton Rouge, Louisiana.

Sherlyn D. Shumpert

Sherlyn D. Shumpert
Presiding Administrative Law Judge
Ethics Adjudicatory Board-Panel A

AB Avery

A. Brock Avery
Administrative Law Judge
Ethics Adjudicatory Board- Panel A

Lance B. Vinson

Lance B. Vinson
Administrative Law Judge
Ethics Adjudicatory Board- Panel A

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Monday, December 28, 2020, I have sent a copy of
this decision/order to all parties of this matter.

Clerk of Court

Division of Administrative Law

REVIEW RIGHTS

Requests for rehearing, reopening, or reconsideration are subject to the procedures, timing requirements, and legal grounds provided in Louisiana Revised Statute 49:959, with the time for filing calculated pursuant to Louisiana Code of Civil Procedure article 5059. To determine your review rights, you should act promptly and seek legal advice.

To request a rehearing or reconsideration, please send it to one of the addresses indicated below:

EMAIL documents to:

EABprocessing@adminlaw.state.la.us

FAX documents to:

**EAB Section Deputy Clerk
(225) 219-9820**

MAIL documents to:

**DAL – EAB Section
ATTN: EAB Section Deputy Clerk
P. O. Box 44033
Baton Rouge, LA 70804-4033**

If you do not request a rehearing of your decision or your rehearing request is denied, you have the right to seek judicial review in accordance with La. R.S. 42:1142(A)(1), with the time for requesting judicial review calculated pursuant to La. C.C.P. art 5059. To determine your review rights, you should act promptly and seek legal advice.